

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: C. Keith Attorney Docket No.: 125462
Application No.: 09/801848 Art Unit: 3693 / Confirmation No.: 1156
Filed: March 8, 2001 Examiner: K. Bartley
Title: PLATFORM FOR MARKET PROGRAMS AND TRADING PROGRAMS

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705

Seattle, Washington 98101

November 10, 2010

TO THE COMMISSIONER FOR PATENTS:

1. By this application for patent term adjustment, applicant respectfully requests reconsideration of the patent term adjustment indicated in the Notice of Allowance mailed on August 10, 2010.
2. Applicant submits below a statement of the correct patent term adjustment and bases under 37 C.F.R. § 1.702 for the adjustment (37 C.F.R. § 1.705(b)(2)).
3. The fee set forth in 37 C.F.R. § 1.18(e) (\$200.00), as required by 37 C.F.R. § 1.705(b)(1), is submitted herewith.
4. No request for reinstatement of all or part of the period of adjustment reduced pursuant to 37 C.F.R. § 1.704(b) is made herein (37 C.F.R. § 1.705(c)).

Statement of the Correct Patent Term Adjustment: Bases Under § 1.702 for the Adjustment (37 C.F.R. § 1.705(b)(2)):

1. This statement is submitted in support of the Application for Patent Term Adjustment, set forth above.

2. The Determination of Patent Term Adjustment provided with the Notice of Allowance indicates a patent term adjustment to date of 348 days. It is respectfully suggested that the correct patent term adjustment to date is 1307 days.

3. The patent to be granted on this application is subject to a terminal disclaimer (37 C.F.R. § 1.705(b)(2)(iii)). The terminal disclaimer is based on U.S. Patent No. 7,539,638. U.S. Patent No. 7,539,638 is set to expire on July 6, 2022.

4. As to circumstances during the prosecution of this application constituting a failure to engage in reasonable efforts to conclude processing or examination of this application as set forth in 37 C.F.R. § 1.704 (37 C.F.R. § 1.705(b)(2)(iv)), the PTO determination of Applicant Delay is believed to be correct.

5. The bases on which applicant seeks adjustment are as follows:

In its initial Determination of Patent Term Adjustment, the U.S. Patent and Trademark Office ("PTO") included PTO Delays under 37 C.F.R. § 1.702(a) for failure to take certain actions within specified time frames in the amount of 742 days. This determination was reduced by 394 days for Applicant Delay under 37 C.F.R. § 1.704. The initial Determination of Patent Term Adjustment thus indicated a patent term adjustment to date of 348 days. Applicant contends that the calculation of PTO Delays under 37 C.F.R. § 1.702(a) is incorrect.

The PTO's determination of 742 days was measured from fourteen months after the filing date of March 8, 2001, to the mailing of an initial Restriction Requirement on May 19, 2004. However, this initial Restriction Requirement was vacated by the PTO on September 14, 2006. No delay on the part of the applicant was involved. The PTO thereafter mailed a new Restriction Requirement on January 3, 2007.

The relevant dates as specified in 37 C.F.R. § 1.703(a) for which an adjustment is sought are summarized as follows:

Application Filing Date	March 8, 2001
Initial Restriction Requirement	May 19, 2004
Initial Restriction Requirement Vacated	September 14, 2006
New Restriction Requirement	January 3, 2007

Since the initial action (Restriction Requirement) was vacated by the PTO and involved no delay on the part of applicant, it is applicant's contention that the mailing date of the first action under 35 U.S.C. § 132 for purposes of calculating patent term adjustment under 37 C.F.R. § 1.703(a)(1) is January 3, 2007. The time period from fourteen months after the date on which the application was filed (March 8, 2001) to the mailing of the new Restriction Requirement (January 3, 2007) is 1701 days. With a reduction of 394 days for Applicant Delay under 37 C.F.R. § 1.704, the determination of patent term adjustment should be **1307 days**.

CONCLUSION

In accordance with the foregoing, it is respectfully submitted that applicant is entitled to an additional 959 days in patent term adjustment under 37 C.F.R. § 1.702(a), for a total patent term adjustment of 1307 days. Reconsideration of the patent term adjustment is respectfully requested.

Respectfully submitted,

CHRISTENSEN O'CONNOR
JOHNSON KINDNESS^{PLLC}



Kevan L. Morgan
Registration No. 42,015
Direct Dial No. 206.695.1712

KLM:jmb